FILE COPY

No. 365

Office-Supreme Court, U.S.
FILED
OCT 29 1958
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

October Term, 1958.

DONALD GEORGE FLEMING, a minor, individually, and by LEONA HOLCOMB, as guardian, *Petitioner*,

vs.

AETNA LIFE INSURANCE COMPANY, a corporation, FRANCIS X. RETTENMEYER, Executor of the Estate of JOSEPH A. RETTENMEYER, deceased, F. E. PENCE, VIRGIL F. SPRANKLE, GROVER D. STROTHER, A. N. MURPHY, JUSTIN W. FAHERTY, FIRST NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, OKLAHOMA, LEONA HOLCOMB, individually, FRANK T. DENHAM, MAY CECELIA DENHAM, DOROTHY LEE DENHAM, a minor, CAROLYN DENHAM LUMLEY, MAY CECELIA DENHAM, as guardian of DOROTHY LEE DENHAM, a minor, GEORGE DENHAM, CLARENCE DENHAM, MARY JANE HOPKINS, *nee* WRIGHT, and MARY ELLEN CASH, *Respondents*.

BRIEF OF RESPONDENTS, FIRST NATIONAL BANK AND TRUST COMPANY, OKLAHOMA CITY, OKLAHOMA, VIRGIL F. SPRANKLE, GROVER D. STROTHER, A. N. MURPHY, JUSTIN H. FAHERTY, IN OPPOSITION TO PETITION FOR CERTIORARI.

RUCKER, TABOR & COX,
608 Wright Building,
Tulsa, Oklahoma,

LOONEY, WATTS, LOONEY & NICHOLS,
First National Bank Bldg.,
Oklahoma City 2, Oklahoma,

Attorneys for the First National Bank and Trust Co., Oklahoma City, Okla.;

COCHRAN, DUDLEY, FOWLER, RUCKS, BAKER & JOPLING,
First National Bank Bldg.,
Oklahoma City 2, Oklahoma,

Attorneys for Virgil F. Sprankle, A. N. Murphy, Grover D. Strother, and Justin W. Faherty.

IN THE SUPREME COURT OF THE UNITED STATES,

October Term, 1958

No. 365

DONALD GEORGE FLEMING, a minor, individually, and by LEONA HOLCOMB, as guardian, *Petitioner*,

vs.

AETNA LIFE INSURANCE COMPANY, a corporation, FRANCIS X. RETTENMEYER, Executor of the Estate of JOSEPH A. RETTENMEYER, deceased, F. E. PENCE, VIRGIL F. SPRANKLE, GROVER D. STROTHER, A. N. MURPHY, JUSTIN W. FAHERTY, FIRST NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, OKLAHOMA, LEONA HOLCOMB, individually, FRANK T. DENHAM, MAY CECELIA DENHAM, DOROTHY LEE DENHAM, a minor, CAROLYN DENHAM LUMLEY, MAY CECELIA DENHAM, as guardian of DOROTHY LEE DENHAM, a minor, GEORGE DENHAM, CLARENCE DENHAM, MARY JANE HOPKINS, *nee* WRIGHT, and MARY ELLEN CASH, *Respondents*.

BRIEF OF RESPONDENTS, FIRST NATIONAL BANK AND TRUST COMPANY, OKLAHOMA CITY, OKLAHOMA, VIRGIL F. SPRANKLE, GROVER D. STROTHER, A. N. MURPHY, JUSTIN H. FAHERTY, IN OPPOSITION TO PETITION FOR CERTIORARI.

Introduction.

Respondents, First National Bank and Trust Company of Oklahoma City, Oklahoma, Virgil F. Sprankle,

Grover D. Strother, A. N. Murphy, and Justin W. Faherty, adopt the statements of the case and the outline of facts as set out in Brief of Respondent, Aetna Life Insurance Company, as if made a part of this brief.

Rosa B. Wright Rettenmeyer, during her life time, kept personal effects including government bonds, in a safety deposit box in the First National Bank and Trust Company of Oklahoma City, Oklahoma. Some of the bonds complained of were obtained by Joseph A. Rettenmeyer, husband, who had power of attorney and Embry, Johnson, Crowe, Tolbert & Boxley, personal attorneys of Rosa B. Wright Rettenmeyer. The life insurance policy and annuity bank and other government bonds purchased. Later these other bonds were cashed through the bank and the funds thereof deposited in the bank to the account of Rosa B. Wright Rettenmeyer. the life insurance policy and annuity contracts in question were purchased from Aetna Life Insurance Company and a check issued therefor. Virgil F. Sprankle, Grover D. Strother, A. N. Murphy, and Justin W. Faherty, respondents herein, were all vice-presidents and department heads of respondent bank and handled all of the said transactions. Two actions were brought against these parties together with Aetna Life Insurance Company. One was filed in Creek County, and the other in Tulsa County. In each of these actions it was alleged that these parties, with others, by common design and purpose

> "did on or about the 31st day of October, 1950, secretly and surreptitiously enter the safety deposit box of said Rosa B. Wright Rettenmeyer in the First National Bank and Trust Company of Oklahoma City and, without authority of law, wrongfully and illegally take, steal and carry away therefrom the U. S. government bonds herein referred to."

Punitive damages were also asked in said actions.

The respondents intervened in the action in the United States District Court of the Northern District of Oklahoma wherein Aetna Life Insurance Company, a corporation, was plaintiff and the petitioners were defendants, because there was a question of law and fact in common and because these intervenors had a pecuniary interest in the subject of the litigation and more particularly as to the funds paid to the Aetna Life Insurance Company for the annuity and insurance policies.

Benefits were paid by the Aetna Life Insurance Company and accepted by Rosa B. Wright Rettenmeyer in her life time, and likewise by her husband, Joseph A. Rettenmeyer, during his life time, after the annuity and insurance policies were purchased. At pre-trial conference the petitioners ratified the annuity and insurance policies and admitted the validity of the insurance contracts as well. Said admission will also be found in many other parts of the record. The brief of the Aetna Life Insurance Company cites and refers to the different parts of the record which we adopt in this brief.

Assuming the respondents had permitted a conversion, which is, of course, denied by these respondents, the ratification of the insurance contracts protects these respondents as well as the Aetna Life Insurance Company.

ARGUMENT AND AUTHORITIES.

These respondents adopt each and all answers and arguments to each and all the propositions and also each

and all the law therein cited as if made a part hereof and adopt the brief of the Aetna Life Insurance Campany as the brief of these respondents.

Respectfully submitted,

RUCKER, TABOR & COX,
BRYAN W. TABOR,
608 Wright Building,
Tulsa, Oklahoma,

LOONEY, WATTS, LOONEY & NICHOLS,
ROBERT D. LOONEY,
First National Bank Bldg.,
Oklahoma City 2, Oklahoma

Attorneys for the First National Bank and Trust Co., Oklahoma City, Okla.;

COCHRAN, DUDLEY, FOWLER, RUCKS, BAKER & JOPLING,
JOSEPH RUCKS,
First National Bank Bldg.,
Oklahoma City 2, Oklahoma

Attorneys for Virgil F. Sprankle, A. N. Murphy, Grover D. Strother and Justin W. Faherty.